Attorney Docket No. 9052.218 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Noel O'Neill
Application No.: 10/528,711
Filed: October 18, 2005
For: APPARATUS FOR PROVIDING A VISUAL EFFECT

Confirmation No. 8453
Examiner: Stephen J. Ralis
Group Art Unit: 3742

December 9, 2008

Mail Stop Appeal Brief -Patents
Commissioner for Patents
P.O. Box 1450
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APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. § 41.67

Sir:

This Appeal Brief is filed pursuant to the Notice of Appeal to the Board of Patent Appeals and Interferences filed November 18, 2008.

Real Party In Interest

The real party in interest is assignee Basic Holdings by virtue of the Assignment recorded on reel number 016897 and frame number 0442.

Related Appeals and Interferences

Appellants are aware of no appeals or interferences that would be affected by the present appeal.

Status of Claims

Claims 1 and 11 are canceled. Claims 2-10 and 12-20 are pending and stand rejected. Appellants appeal the final rejection of Claims 2-10 and 12-20 by the Final Office Action dated July 18, 2008 (the "Action"). Claim 2-8 and 12-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.K. Publication No. 2298073 to O'Neill ("O'Neill") in view of U.S. Patent No. 6, 564,485 to Hess ("Hess"), U.K. Publication No. 2372807 to O'Neill ("O'Neill-2) and Japanese Patent No. JP06290762 to Fukue ("Fukue"). Claim 5 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess,

and UK Publication No. 2276444A to McDonald ("McDonald"). Claim 9 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess and U.S. Patent No. 2,984,032 to Cornell ("Cornell") and U.S. Patent No. 6,269,567 to MacPherson ("MacPherson"). Claim 17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess and U.S. Patent No. 3,742,189 to Conroy ("Conroy"). Claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess and in view of Cornell and MacPherson. Claim 10 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Cornell. Claim 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Cornell and Conroy. Claim 20 stands rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Cornell and MacPherson.

Status of Amendments

The Appendix of Claims submitted herewith reflects the state of the claims of record. No amendments were filed after the Action.

Summary of Claimed Subject Matter

Independent Claim 2 recites a flame effect electric fire including i) a housing 10 having at least first and second opposing external side panels, a top external panel and an opposing bottom underside external panel, wherein the first side panel of the housing is adapted to be mounted on a substantially plane wall (*see, e.g.*, page 6, lines 11-12; Figures 1-3); ii) heating means disposed in the housing operative to draw air into the housing, heat the air and expel the heated air (*see, e.g.*, page 6, lines 19-31; page 11, lines 21-24; fuel bed 24, blower 40; Figures 1-3); and iii) a flame simulating assembly mounted in the housing 10 (*see, e.g.*, page 6, lines 19-22; Figures 1-3). The flame simulating assembly includes (a) a light source 16; (b) a viewing screen 22 on the second side panel capable of diffusing and transmitting light; (c) a rear reflecting means 20 disposed behind the viewing screen; and (d) means for producing moving beams of light 18 (*see, e.g.*, page 6, lines 19-22; Figures 1-3). The light source 16 is disposed below the reflecting means 20 and behind the viewing screen 22, the means for producing moving beams of light 18 is disposed in front of the light source 16 and below the screen 22 and light from the light source 16 is reflected by the means for producing moving beams of light 18 onto the reflecting means 20 and is reflected by the

reflecting means 20 onto the screen 22 to produce a perceptible image viewable on the screen 22 (*see, e.g.*, page 6, lines 19-22; Figures 1-3). The heating means expels air in a generally vertically downward direction through an air expulsion aperture 44 in the underside external panel of the housing 10 (*see, e.g.*, page 11, lines 1-27).

Claim 5 depends from Claim 2 and recites a flame effect electric fire further including an additional reflector 21 behind the light source 16. *See, e.g.*, page 9, lines 23-25; Figures 1-3.

Claim 8 depends from Claim 2 and further recites that the means for producing moving beams of light includes a shaft 26 mounted substantially horizontally for rotation about its axis. *See, e.g.*, page 7, lines 1-2; Figures 1-3. The shaft 26 includes a plurality of generally radially directed pieces of reflective material 30 depending therefrom. *See, e.g.*, page 7, lines 1-5; Figures 1-3. The pieces are effective to reflect light from the light source onto the screen 22. *See, e.g.*, page 7, lines 1-24; Figures 1-3. Claim 9 depends from Claim 8 and further recites that the shaft 26 is driveably connected at a first end thereof via a flexible bushing 32 to a drive means operative to rotate the shaft 26 and is releasably retained at a second end thereof in a supporting bracket 34. *See, e.g.*, page 10, lines 15-19; Figures 6, 7 and 8. The supporting bracket 34 has a slot 38 therein adjacent the second end of the shaft 26. *See, e.g.*, page 10, lines 20-29; Figures 6, 7 and 8. The first end of the shaft 26 is configured to be retained by the flexible bushing 32 when the second end is released from the supporting bracket 34 via the slot 38 in the supporting bracket 34. *See, e.g.*, page 10, lines 20-29; Figures 6, 7 and 8. The shaft 26 is displaceable from its operative position on release of its second end by flexure of the flexible bushing 32, thereby to permit access to the light source 16. *See, e.g.*, page 10, lines 20-29; Figures 6, 7 and 8.

Independent Claim 10 recites an apparatus for producing a visual effect for simulating flames including i) a light source 16; ii) a simulated fuel bed 24; iii) a viewing screen 22 mounted about the fuel bed 24 capable of diffusing and transmitting light and comprising a partially reflective front surface whereby an image of the fuel bed 24 may be seen in the viewing screen; and iv) means for producing moving beams of light 18. *See, e.g.*, page 6, lines 11-31; Figures 1-3. Light from the light source 16 is reflected by the means for producing moving beams of light 18 directly and/or indirectly onto the viewing screen 22 to produce a perceptible image viewable on the screen 22. *See, e.g.*, page 6, lines 11-31; Figures 1-3. The means for producing moving beams of light 18 includes a shaft 26 mounted

for rotation about its axis and having a reflective material 30 mounted thereon for reflecting light from the light source 16. *See, e.g.*, page 6, lines 2-3; Figures 1-3. The shaft 26 is driveably connected at a first end thereof via a flexible bushing 32 to a drive means operative to rotate the shaft 26 and is releasably retained at a second end thereof in a supporting bracket 34. *See, e.g.*, page 10, lines 15-19; Figures 6, 7 and 8. The first end of the shaft 26 is configured to be retained by the flexible bushing 32 when the second end is released from the supporting bracket 34. *See, e.g.*, page 10, lines 15-19; Figures 6, 7 and 8. The shaft 26 is displaceable from its operative position on release of its second end by flexure of the flexible bushing 23, thereby to permit access to the light source 16. *See, e.g.*, page 10, lines 15-19; Figures 6, 7 and 8.

Claim 17 depends from Claim 2 and further recites mounting means for mounting the flame effect fire on a wall. *See, e.g.*, page 1, lines 12-19.

Claim 18 depends from Claim 10 and further recites mounting means for mounting the flame effect fire on a wall. *See, e.g.*, page 1, lines 12-19.

Claim 19 depends from Claim 2 and further recites an air intake aperture in the underside external panel of the housing 10. *See, e.g.*, page 11, lines 21-24; Figures 1-3. The heating means is configured to draw air into the housing 10 through the air intake aperture 42 in the underside external panel of the housing and to expel the heated air through the air expulsion aperture 44 in the underside external panel of the housing 10. *See, e.g.*, page 11, lines 21-24; Figures 1-3.

Claim 20 depends from Claim 10 and further recites that the supporting bracket 34 has a slot 38 therein adjacent the second end of the shaft 26 and the second end of the shaft is released from the supporting bracket 34 via the slot 38. *See, e.g.*, page 10, lines 15-19; Figures 6, 7 and 8.

Grounds of Rejection to be Reviewed on Appeal

1. Whether Claims 2-8 and 12-16 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess, O'Neill-2 and Fukue.

2. Whether Claim 5 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess and McDonald.

3. Whether Claim 9 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess, Cornell and MacPherson.

4. Whether Claim 17 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess and Conroy.

5. Whether Claim 19 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Hess, Cornell and MacPherson.

6. Whether Claim 10 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Cornell.

7. Whether Claim 18 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Cornell and Conroy.

8. Whether Claim 20 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill in view of Cornell and MacPherson.

Argument

I. Claims 2-8 and 12-16 are patentable under 35 U.S.C. 103(a) over O'Neill in view of Hess, O'Neill-2 and Fukue.

Claim 2 recites a flame effect electric fire including:

> i) a housing having at least first and second opposing external side panels, a top external panel and an opposing bottom underside external panel, wherein the first side panel of the housing is adapted to be mounted on a substantially plane wall;
>
> ii) heating means disposed in the housing operative to draw air into the housing, heat the air and expel the heated air; and
>
> iii) a flame simulating assembly mounted in the housing and comprising:
>
> (a) a light source;
>
> (b) a viewing screen on the second side panel capable of diffusing and transmitting light;
>
> (c) a rear reflecting means disposed behind the viewing screen; and
>
> (d) means for producing moving beams of light, wherein the light source is disposed below the reflecting means and behind the viewing screen, the means for producing moving beams of light is disposed in front of the light source and below the screen and light from the light source is reflected by the means for producing moving beams of light onto the reflecting means and is reflected by the reflecting means onto the screen to produce a perceptible image viewable on the screen, and wherein the heating means expels air in a generally vertically downward direction through an air expulsion aperture in the underside external panel of the housing.

The Action concedes that O'Neill does not disclose that the heating means expels air in a generally vertically downwardly direction through an air expulsion aperture in an underside panel of the housing, or that the underside panel is an opposing bottom underside external panel to a top external panel. However, the Action identifies "vents" on the bottom of the stove heater unit **40** of Hess, and concludes that Hess expels air in a generally vertically downwardly direction through the "vents." In response, a Declaration under Rule 132 by Kristoffer Hess, the sole inventor of Hess, was submitted in Appellant's paper of September 18, 2008 (the "Hess Declaration"). The Hess Declaration is provided in the Evidence Appendix attached hereto.

As stated in the Hess Declaration, the "vents" identified on page 8 of the Action are air inlets. The outlets of the stove heater unit **40** are located on the side of the unit **40** so that heated air is expelled in a generally forward direction. *See* the Hess Declaration, paragraph 4. The inlets and outlets of the stove heater unit **40** of Hess are therefore located on different panels of the unit **40**. *See* the Hess Declaration, paragraph 5 and **Figures 3-4** of Hess, reproduced below with annotation indicating the inlets and outlets of the heater unit **40**.

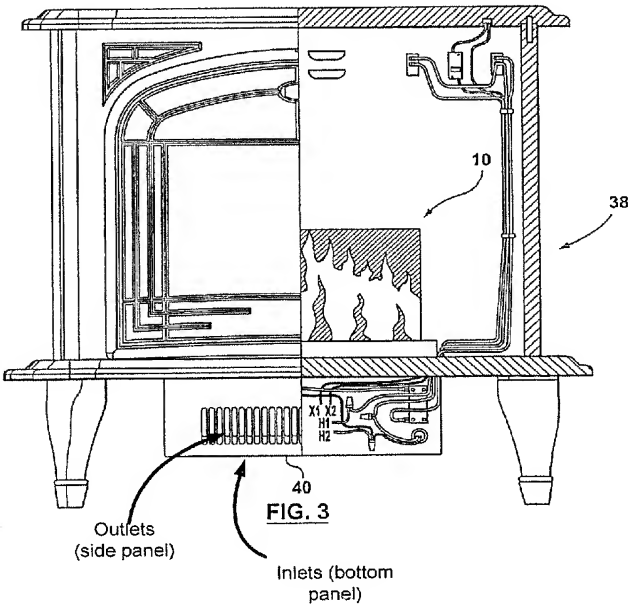


FIG. 3

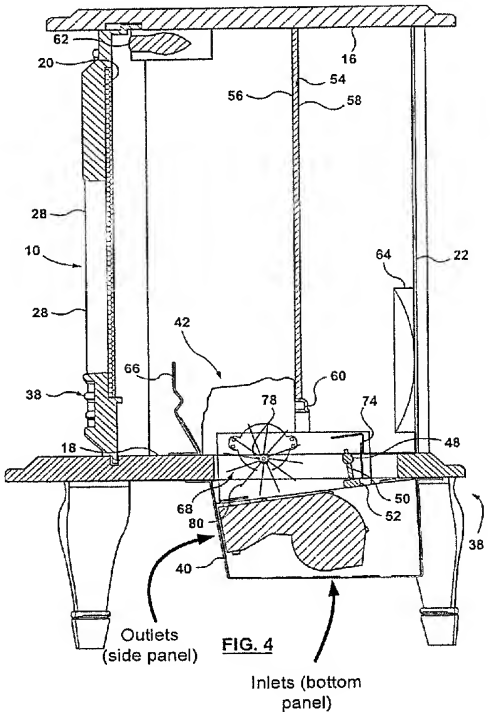


FIG. 4

Accordingly, Hess does not disclose a heating means that "expels air in a generally vertically downward direction through an air expulsion aperture in the underside external panel of the housing" as recited in Claim 2.

For at least these reasons, the recitations of Claim 2 are not taught or suggested by the art cited in the Action. Claims 3-8 and 12-16 depend indirectly or directly from Claim 2 and are patentable over the cited are very least the reasons discussed above. Accordingly, Appellant requests that the rejections under Section 103 be reversed.

II. Claim 5 is patentable under 35 U.S.C. 103(a) over O'Neill in view of Hess, and McDonald.

Claim 5 depends from Claim 2, and as such is patentable over the combination of O'Neill and Hess for the same reasons as set forth above with respect to Claim 1. McDonald does not provide the missing elements of Hess and O'Neill discussed above. Accordingly, Appellant requests that the rejections under Section 103 be reversed.

III. Claim 9 is patentable under 35 U.S.C. 103(a) over O'Neill in view of Hess and Cornell and MacPherson.

Claim 9 depends indirectly from Claim 2, and is therefore patentable for least the reasons discussed with respect to Claim 2. In addition, Claim 9 is separately patentable for at least the reasons discussed below.

Claim 9 stands rejected under Section 103 as being unpatentable over O'Neill in view of Hess, Cornell and MacPherson In particular, Claim 9 recites a shaft that

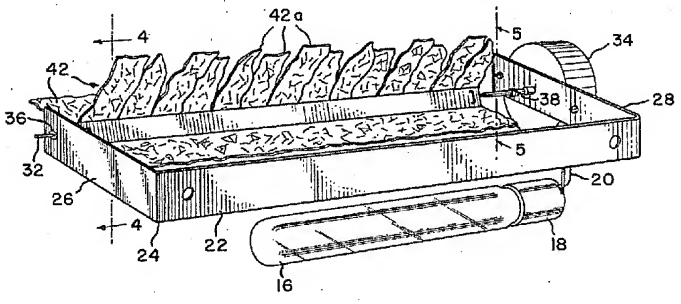
> is driveably connected at a first end thereof via a flexible bushing to a drive means operative to rotate the shaft and is releasably retained at a second end thereof in a supporting bracket, the supporting bracket having a slot therein adjacent the second end of the shaft, the first end of the shaft being configured to be retained by the flexible bushing when the second end is released from the supporting bracket via the slot in the supporting bracket, and the shaft being displaceable from its operative position on release of its second end by flexure of the flexible bushing, thereby to permit access to the light source.

Accordingly, Claim 9 recites that the first end of the shaft is configured to be retained by the flexible bushing when the second end is released from the supporting bracket and that the second end is released via a slot in the supporting bracket.

The Action concedes that the above-emphasized recitations of Claim 9 are not disclosed by O'Neill or Hess. The Action takes the position that these recitations are disclosed by Cornell and MacPherson.

Appellant submits that Cornell does not disclose or render obvious that the first end of the shaft is configured to be retained by a flexible bushing when the second end is released from the supporting bracket or that the second end is released via a slot in the supporting bracket. In particular, the element **40** of Cornell is not equivalent to the flexible bushing recited in Claim 9 because the opposite end of the shaft **32** is clearly not configured to be released. Cornell states that "the motor shaft **38** is coupled to the driven shaft **32** by a resilient sleeve **40** of rubber or the like, making it an easy matter to disconnect the shaft when desired without the use of any tools." *See* Cornell col. 2, lines 40-44. Thus, it is the end adjacent the sleeve **40** of Cornell that is released, and Cornell does not disclose that the first end of the shaft is configured to be retained by the flexible bushing when the second end is released, *e.g.*, from a slot in the supporting bracket as recited in Claim 9.

FIG. 3.



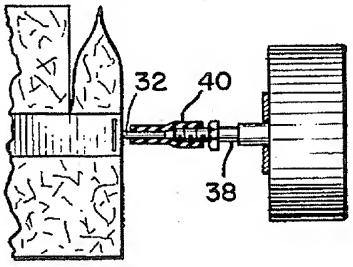


FIG. 5.

MacPherson is merely cited as disclosing a slot, and as such, does not provide the missing elements of Cornell discussed above.

For at least these reasons, Appellants submit that Claim 9 is separately patentable and respectfully requests that the rejections under 35 U.S.C. 103(a) be reversed.

IV. Claim 17 is patentable under 35 U.S.C. 103(a) over O'Neill in view of Hess and Conroy.

Claim 17 depends from Claim 2, and as such is patentable over the combination of O'Neill and Hess for the same reasons as set forth above with respect to Claim 1. Conroy

does not provide the missing elements of Hess and O'Neill discussed above. Accordingly, Appellant requests that the rejections under Section 103 be reversed.

V. Claim 19 is patentable 35 U.S.C. 103(a) over O'Neill in view of Hess and in view of Cornell and MacPherson.

Claim 19 depends from Claim 2 and is therefore patentable for at least the reasons discussed with respect to Claim 2 above. Appellant submits that Claim 19 is separately patentable for at least the following reasons.

Claim 19 recites an air intake aperture in the underside external panel of the housing, and that the heating means is configured to draw air into the housing through the air intake aperture in the underside external panel of the housing and to expel the heated air through the air expulsion aperture in the underside external panel of the housing. As stated in the Hess Declaration, the "vents" identified on page 8 of the Action are air inlets. The outlets of the stove heater unit **40** are located on the side of the unit **40** so that heated air is expelled in a generally forward direction. The inlets and outlets of the stove heater unit **40** of Hess are therefore located on *different panels* of the unit **40**. In contrast, Claim 19 recites that the air intake aperture and the air expulsion aperture are both in the underside external panel of the housing.

For at least these reasons, Appellant submits that Claim 19 is separately patentable and respectfully requests that the rejections under 35 U.S.C. 103(a) be reversed.

VI. Claim 10 is patentable under 35 U.S.C. 103(a) over O'Neill in view of Cornell.

Claim 10 recites an apparatus for producing a visual effect for simulating flames including:

i) a light source;
ii) a simulated fuel bed;
iii) a viewing screen mounted about the fuel bed capable of diffusing and transmitting light and comprising a partially reflective front surface whereby an image of the fuel bed may be seen in the viewing screen;
iv) means for producing moving beams of light, wherein:
a) light from the light source is reflected by the means for producing moving beams of light directly and/or indirectly onto

> the viewing screen to produce a perceptible image viewable on the screen; and
> b) the means for producing moving beams of light comprises a shaft mounted for rotation about its axis and having a reflective material mounted thereon for reflecting light from the light source, the shaft is driveably connected at a first end thereof via a flexible bushing to a drive means operative to rotate the shaft and is releasably retained at a second end thereof in a supporting bracket, the first end of the shaft being configured to be *retained* by the flexible bushing when the second end is released from the supporting bracket and the shaft being displaceable from its operative position on release of its second end by flexure of the flexible bushing, thereby to permit access to the light source.

As noted above, Claim 10 was rejected in the Action under § 103 as being obvious over O'Neill in view of Cornell.

Appellant submits that O'Neill and/or Cornell do not disclose or render obvious at least the above-emphasized recitations of Claim 10 for at least the following reasons. Cornell discusses that one end of the shaft **32** is journaled in a bearing **36**, and the other end includes a resilient sleeve **40**. As discussed above with respect to Claim 9, Cornell discusses disconnecting the shaft **32** at the end having the resilient sleeve **40**. *See* Cornell, col. 2, lines 40-44.

In contrast, Claim 10 recites that the first end of the shaft is configured to be retained by the flexible bushing. Because Cornell states that the resilient sleeve **40** (which the Action states is analogous to the claimed flexible cushing) is designed to make it "an easy matter to disconnect the shaft" at the resilient sleeve **40**, there is no apparent reason why one of ordinary skill would modify Cornell to disconnect the shaft **32** at the bearing **36**.

For at least these reasons, Appellant submits that the recitations of Claim 10 are not taught or suggested by O'Neill and/or Cornell. Accordingly, Appellant requests that the rejection of Claim 10 under § 103 be reversed.

VII. Claim 18 is patentable under 35 U.S.C. 103(a) over O'Neill in view of Cornell and Conroy.

Claim 18 depends from Claim 10, and as such is patentable over the combination of O'Neill and Cornell for the same reasons as set forth above with respect to Claim 10. Conroy

does not provide the missing elements of O'Neill and Cornell discussed above. Accordingly, Appellant requests that the rejections under Section 103 be reversed.

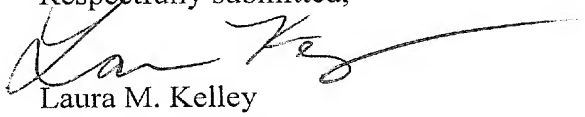
VIII. Claim 20 is patentable under 35 U.S.C. 103(a) over O'Neill in view of Cornell and MacPherson.

Claim 20 depends from Claim 10, and as such is patentable over the combination of O'Neill and Cornell for the same reasons as set forth above with respect to Claim 10. MacPherson does not provide the missing elements of O'Neill and Cornell discussed above. Accordingly, Appellant requests that the rejections under Section 103 be reversed.

CONCLUSION

In view of the above discussion, Appellants submit that the rejection of Claims 2-10 and 12-20 should be reversed and the present application passed to issue.

Respectfully submitted,



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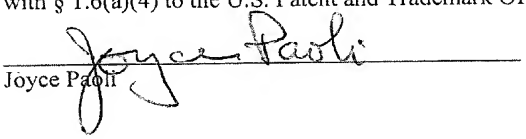
CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on December 9, 2008.



Joyce Paoli

Claims Appendix

1. (Canceled)

2. (Previously Presented) A flame effect electric fire comprising:

i) a housing having at least first and second opposing external side panels, a top external panel and an opposing bottom underside external panel, wherein the first side panel of the housing is adapted to be mounted on a substantially plane wall;

ii) heating means disposed in the housing operative to draw air into the housing, heat the air and expel the heated air; and

iii) a flame simulating assembly mounted in the housing and comprising:

(a) a light source;

(b) a viewing screen on the second side panel capable of diffusing and transmitting light;

(c) a rear reflecting means disposed behind the viewing screen; and

(d) means for producing moving beams of light, wherein the light source is disposed below the reflecting means and behind the viewing screen, the means for producing moving beams of light is disposed in front of the light source and below the screen and light from the light source is reflected by the means for producing moving beams of light onto the reflecting means and is reflected by the reflecting means onto the screen to produce a perceptible image viewable on the screen, and wherein the heating means expels air in a generally vertically downward direction through an air expulsion aperture in the underside external panel of the housing.

3. (Original) A flame effect electric fire as claimed in claim 2 wherein the light source comprises at least one halogen bulb or tungsten filament bulb having a maximum external dimension of not more than about 40mm.

4. (Previously Presented) A flame effect electric fire as claimed in claim 2 wherein light from the light source is prevented from falling directly onto the viewing screen by means of a baffle mounted above the light source.

5. (Previously Presented) A flame effect electric fire as claimed in claim 2 further comprising an additional reflector behind the light source.

6. (Previously Presented) A flame effect electric fire as claimed in claim 2, wherein the light source has a width of not more than about 35mm.

7. (Previously Presented) A flame effect electric fire as claimed in claim 4 wherein the light source has a width of not more than about 15mm.

8. (Previously Presented) A flame effect electric fire as claimed in claim 2 wherein the means for producing moving beams of light comprises a shaft mounted substantially horizontally for rotation about its axis, said shaft having a plurality of generally radially directed pieces of reflective material depending therefrom, said pieces being effective to reflect light from the light source onto the screen.

9. (Previously Presented) A flame effect electric fire as claimed in claim 8 wherein the shaft is driveably connected at a first end thereof via a flexible bushing to a drive means operative to rotate the shaft and is releasably retained at a second end thereof in a supporting bracket, the supporting bracket having a slot therein adjacent the second end of the shaft, the first end of the shaft being configured to be retained by the flexible bushing when the second end is released from the supporting bracket via the slot in the supporting bracket, and the shaft being displaceable from its operative position on release of its second end by flexure of the flexible bushing, thereby to permit access to the light source.

10. (Previously Presented) An apparatus for producing a visual effect for simulating flames comprising:

i) a light source;

ii) a simulated fuel bed;

iii) a viewing screen mounted about the fuel bed capable of diffusing and transmitting light and comprising a partially reflective front surface whereby an image of the fuel bed may be seen in the viewing screen;

iv) means for producing moving beams of light, wherein:

a) light from the light source is reflected by the means for producing moving beams of light directly and/or indirectly onto the viewing screen to produce a perceptible image viewable on the screen; and

b) the means for producing moving beams of light comprises a shaft mounted for rotation about its axis and having a reflective material mounted thereon for reflecting light from the light source, the shaft is driveably connected at a first end thereof via a flexible bushing to a drive means operative to rotate the shaft and is releasably retained at a second end thereof in a supporting bracket, the first end of the shaft being configured to be retained by the flexible bushing when the second end is released from the supporting bracket and the shaft being displaceable from its operative position on release of its second end by flexure of the flexible bushing, thereby to permit access to the light source.

11. (Cancelled)

12. (Previously Presented) A flame effect electric fire as claimed in claim 2 wherein the rear reflecting means comprises a sheet of material having reflecting regions and non-reflecting regions.

13. (Previously Presented) A flame effect electric fire as claimed in claim 12 wherein the reflecting regions are generally flame shaped.

14. (Previously Presented) A flame effective electric fire as claimed in claim 2 wherein the rear reflecting means has a concave reflecting surface.

15. (Previously Presented) A flame effect electric fire as claimed in claim 2 further comprising a simulated fuel bed disposed directly in front of the diffusing and transmitting screen.

16. (Previously Presented) A flame effect electric fire as claimed in claim 15 wherein the screen comprises a reflective front surface configured such that a reflection of the fuel bed can be seen in the screen.

17. (Previously Presented) A flame effect electric fire as claimed in claim 2 further comprising mounting means for mounting the flame effect fire on a wall.

18. (Previously Presented) A flame effect electric fire as claimed in claim 10 further comprising mounting means for mounting the flame effect fire on a wall.

19. (Previously Presented) A flame effect electric fire as claimed in claim 2 further comprising an air intake aperture in the underside external panel of the housing, wherein the heating means is configured to draw air into the housing through the air intake aperture in the underside external panel of the housing and to expel the heated air through the air expulsion aperture in the underside external panel of the housing.

20. (Previously Presented) An apparatus as claimed in claim 10 wherein the supporting bracket has a slot therein adjacent the second end of the shaft and the second end of the shaft is released from the supporting bracket via the slot.

Evidence Appendix

Declaration under Rule 132 by Kristoffer Hess.

Attorney Docket No. 9052.218

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Noel O'Neill
Application No.: 10/528,711
Filed: October 18, 2005
For: APPARATUS FOR PROVIDING A VISUAL EFFECT

Confirmation No. 8453
Examiner: Stephen J. Ralis
Group Art Unit: 3742

Mail Stop Amendment
Commissioner for Patents
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Alexandria, VA 22313-1450

I, Kristoffer Hess, do hereby declare and say as follows:

1. My background and experience are as follows.

I am the Senior Vice-President of Product Development and Engineering at Dimplex North America Limited. I graduated from Ryerson University (as it is now) in 1985 with the degree of Bachelor of Technology in Mechanical Engineering. I have been a Professional Engineer in the Province of Ontario since 1998. My experience includes over 23 years of design and fabrication of mechanical and electrical devices.

2. I have reviewed the contents of U.S. Patent Application No. 10/528,711 to O'Neill ("O'Neill"), and the Office Action dated July 18, 2008 in O'Neill (the "Action").

3. I am the inventor of U.S. Patent No. 6,564,485 to Hess ("Hess"), which is cited in the Action. The Hess patent has been assigned to Dimplex North America Limited. Dimplex North America Limited is owned by the parent company of Basic Holdings. O'Neill is assigned to Basic Holdings.

4. Page 8 of the Action identifies "vents" on the bottom of the stove heater unit 40 in Hess. These "vents" are air inlets. The outlets of the stove heater unit 40 are located on the side of the unit 40 so that heated air is expelled in a generally forward direction. The inlets and outlets of the stove heater unit 40 of Hess are therefore located on different panels of the unit 40.

5. Figures 3 and 4 are reproduced below with notation added indicating the positions of the air inlet and outlets.

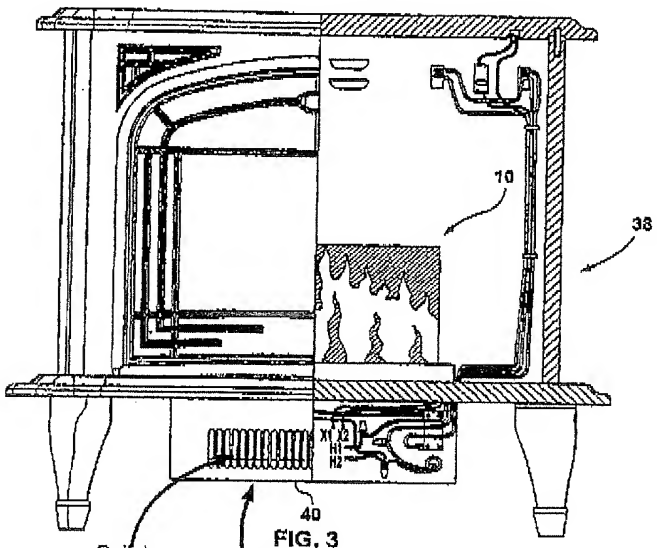

FIG. 3

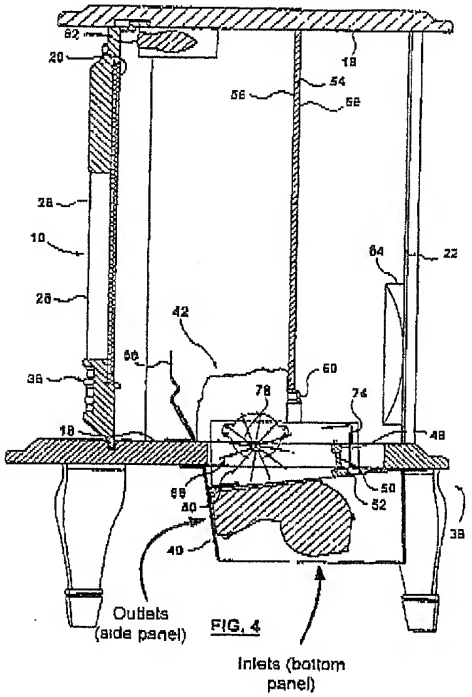

FIG. 4

6. All of the statements made above of the undersigned declarant's own knowledge are true, and all statements made on information and belief are believed to be true. The undersigned acknowledges that willful false statements and the like made herein are punishable by fine or imprisonment, or both (18 U.S.C. § 1001), and may jeopardize the validity of the above-referenced application or any patent issuing therefrom.

Kristoffer Hess

Sept 18, 2008
Date

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Related Proceedings Appendix

NONE